



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-88-10

FACTS:

You are a teacher in the town of ABC. Your employment with the School Department is governed by the 1987-1990 ABC Collective Bargaining Agreement (Agreement). In addition to setting forth the teacher salary schedule, the Agreement states that: Teacher participation in extra curricular activities shall be voluntary and teachers will be compensated for participation in extracurricular activities established by the Committee.

The ABC School Committee has determined that, under the Agreement, extracurricular activities established by the School Committee include scholarly-writing and producing of curriculum materials for publication which would result in compensation through royalties to the professional staff members (provided that materials are ordered and purchased). You have written and have had published certain scholarly materials, including a textbook on problem-solving skills, and the School Department is interested in purchasing your textbook. You State that you do not participate in the selection of books purchased by the school department.[1]

QUESTION:

Does G.L. c. 268A permit you to receive royalties from the sale of your book to the ABC School Department?

ANSWER:

Yes.

DISCUSSION:

You are an ABC public school teacher, and therefore, a municipal employee pursuant to your employment contract with the ABC School Department G.L. c. 268A, s.1(g). The conflict of interest law prohibits municipal employees from having a financial interest, directly or indirectly, in contracts (other than their employment contracts) made by a municipal agency of the same town. G.L. c. 268A, s.20. The receipt of income from a contract made by the School Department would constitute a financial interest in a contract made by a municipal agency. Accordingly, if you are to be compensated for providing additional services or for selling a publication to the School Department, you would violate s.20 unless the arrangement was contemplated in your employment agreement with the School Department.

The Commission has previously held that the multiple contract restrictions of G.L. c. 268A do not apply when an employee's additional services and compensation are an expansion of the employee's primary employment contract. See, EC-COI-84-148 (where one who serves on a state advisory committee may also be employed and paid by the state for another job provided the responsibilities for both originate with the employee's one contract of employment). Therefore, if it is "by virtue of [a teacher's] employment arrangement that a teacher receives compensation for performing additional responsibilities, this compensation will be permitted. Id. See also, EC-COI-84-147 (where state university employees may also serve on the board of directors of a state university controlled company and will not have a prohibited financial interest in multiple state contracts; the Commission concluded that "service as state employees for the company and the university is connected to only one state contract, their original university contract"); 83-83 (where one contract contemplates the services provided by an employee in two positions, s.7 [the state counterpart to s.20] is not violated); 82-57 (where a city employee's duties are expanded under one contract of employment. the employee is considered to have a financial interest in only one contract made by the city and, therefore, does not violate s.20).

In light of these precedents, we regard the performance of extracurricular activities by a teacher to be tied to and contemplated by the teacher's primary employment contract, and, therefore, not in violation of G.L. c. 268A, s.20.

We also find that the receipt of royalties from the sale of books to the School Department appears to be a permissible, compensable extracurricular activity under the agreement. We defer to the School Committee's interpretation that the teachers' collective bargaining agreement permits teachers to be paid for their publications in the event the department purchases them. We conclude that the construction of the contract is reasonable and that it is within the scope of legitimate extracurricular activities that a teacher would publish and receive royalties from the sale of scholarly writings, particularly those writings which may be used in the classroom.[2]

DATE AUTHORIZED:

[1] Section 19 of G.L. c. 268A prohibits a municipal employee from participating in any particular matter in which, among others, the employee has a financial interest. Thus, a teacher is prohibited from participating in the school department's selection of a book which he or she authored, as this would lead to the teacher's receipt of royalties and would, accordingly, affect the teacher's financial interest. This prohibition is not applicable to this case as you had no participation in the school department's selection and purchase of your book. However, those school officials who do participate in the selection of classroom texts must be guided by the principles of s.23(b) (2) of the conflict law; i.e., they may not use their public positions to secure an unwarranted privilege or benefit of substantial value for another when such a privilege is unavailable to similarly situated people. Thus, there must be objective criteria and standards

employed to aid in the unbiased selection of textbooks, and your book may not be selected merely as a favor to you.

[2] Our willingness to defer to the School Committee rests on the fact that the preparation of written materials for educational purposes is an endeavor which is traditionally undertaken by teachers and which often is relevant to the evaluation of teacher performance. Thus, while under normal circumstances receipt of royalties could not reasonably be characterized as additional compensation contemplated by the employment contract, this important component of a teacher's professional activity is deserving, in the Commission's view, of particular consideration in interpreting the terms of the collective bargaining agreement and the requirements of G.L. c. 268A, s.20.